

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 757 of 2006.

Decided on: 09.05 2007.

Jai Parkash.

Versus

State of H.P. and others.

... .. **Petitioner.**

... .. **Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?¹ No.

For the petitioner: Mr. Surender Saklani, Advocate.

For the Respondents: Ms. Meenakshi Sharma, Deputy Advocate General.

Rajiv Sharma, Judge (Oral):

The brief facts necessary for adjudication of this petition are that the Patwari, Patwar Circle, Dadahu reported and prepared missal that the father of the petitioner had encroached upon the government land comprising in Khata Khatauni No.266/41 min, Khasra No.925/884/450/6, measuring 0-0-9 biswansi and Khasra No. 925/884/450/7 measuring 0-0-9 biswansi, kites two total measuring 0-0-18 biswansi situated at Mauza Chuli Dadahu by raising khokha. In sequel to the report the petitioner's father was

Whether reporters of local papers may be allowed to see the judgment? No.

served with notice under Section 163 of the H.P. Land Revenue Act. The petitioner's father filed detailed reply to the show cause notice on 8.8.1997. It will be apt to reproduce para 2 of the reply filed by petitioner's father pursuant to show cause notice under Section 163 of the H.P. Land Revenue Act as under:-

“That the replying respondents are coming in peaceful possession over the suit land from the time their/his ancestors more than 60 years and the nature of the land had been changed by constructing a pucca shop/house over the suit land and running his business in that shop from the time immemorial without any interference from any body, which is also in the knowledge of the State through his employees/officials, who never hesitate the peaceful possession of the respondent thereon. It is the settled law that the long possession of the respondent and his predecessors-in-title of the suit land raised a genuine dispute between them and the government on the question of title remembering especially that the property admittedly belong to the State Government, but are coming in the peaceful possession of the respondent from the time immemorial and perfected his title by adverse possession had to be decided in a properly constituted suit and until the Govt. succeed in establishing its title to the property the respondent could not be evicted summarily.

The petitioner's father has also filed amended reply to the show cause notice on 10th January, 2000. the copy of the same is placed on record alongwith supplementary affidavit filed by the petitioner. The Assistant Collector IInd Grade, Dadahu ordered

the eviction of the petitioner on 31.7.2001. Shri Jeewan Ram, father of the petitioner filed appeal before the Collector, Sub Divisional, Nahan on 24.8.2001. The Collector, Sub-Division, Nahan dismissed the appeal vide order dated 18th March, 2002 (Annexure P-2).

Feeling aggrieved by the order dated 18.3.2002, the petitioner, after the death of his father, filed revision petition before the Commissioner, Shimla Division, Shimla-2 on 8.12.2003.

Mr. Surinder Saklani submits that in view of the specific stand taken in the replies filed pursuant to the notice under Section 163 of the H.P. Land Revenue Act, the case was required to be heard by the Assistant Collector Grade-I by assuming the powers of civil court. Section 163 of the H.P. Land Revenue Act reads as under:-

“Section 163. Prevention of encroachment on lands. – (1) Where Government land or land which has been reserved for the site of a village or for the common purposes of the co-sharers therein has been encroached upon by any co-sharer or other person for any purpose including construction of a building or other structure thereon then –

(a) the Revenue Officer may of his own motion or on the application of any other co-sharer eject the encroaching person (hereinafter in this Section referred to as the encroacher) from such land and by order, proclaimed in the manner mentioned in Section 23, prohibit repetition of the encroachment therein:

Provided that no encroacher shall be ejected under this clause unless he has been given a reasonable opportunity of showing cause against the ejection;

- (b) the Revenue Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damage on account of such encroachment and may, by order, require the encroacher to pay the damages within such period and in such instalments as may be specified in the order;**
 - (c) if the encroacher has erected any building or other structure or has grown crops or planted trees on the encroached land, it shall be competent for the Revenue Officer, while ordering his ejection to dismantle such building or other structure and confiscate any produce or other material on such land and put the same in public auction and deposit the sale proceedings thereof into the Government treasury; and**
 - (d) the Revenue Officer may impose upon the encroacher a fine up to (one thousand rupees per bigha or part thereof in the case of first encroachment) and, where the encroachment is repeated, a fine up to (two thousand rupees per bigha or part thereof for each such subsequent encroachment).**
- (2) Any amount payable as damages under clause (b) of sub-section (1) or as fine under clause (d) of that sub-section may be recovered in the same manner as arrears of land revenue.**

- “(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this Section, the Revenue Officer, not below the rank of an Assistant Collector of the first grade, shall proceed to determine the question, as if he, were a civil Court and shall exercise all such powers as are exercisable by a civil Court.**
- (4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the some procedure as is applicable to the trial of an original suit by a civil Court, and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.**
- (5) An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.**
- (6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved”, and**
- (7) No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this Section in respect of anything in good faith done or purported to**

have been done under the provisions thereof or the rules made thereunder.

***Explanation.* - For the purpose of this section, any person who holds land under a lease granted by the Government for a fixed term and continues to be in possession of the land beyond the expiry of the period of lease shall be deemed to be encroacher under such person gets the lease extended or renewed)."**

Mr. M.S. Chandel, learned Advocate General has supported the orders passed by the authorities under the Himachal Pradesh Land Revenue Act, 1953.

I have heard the parties and gone through the record.

Once the plea of adverse possession has been taken up in the replies filed by the petitioner in pursuance to the show cause notice under Section 163 of the H.P. Land Revenue Act, 1953 and question of title was involved, in that event the Assistant Collector Grade-I was to proceed to determine this question as if, he were a civil Court. This procedure has not been adopted in the present case. The order of eviction has been passed by the Assistant Collector IInd Grade, Sub Tehsil Dadahu on 31.7.2001. The order was required to be passed by the Assistant Collector of the first grade. The question whether the order could be passed by the Assistant Collector IInd Grade or not, was raised in appeal preferred by the petitioner's father before Collector, Nahan Sub-Division. The Appellate Authority, i.e. Collector, Nahan has not

considered the plea raised by the petitioner and accordingly, the order was passed on 18th March, 2002 against the petitioner. In revision petition, which is at page 22 of the paper book, the petitioner had again reiterated that the Assistant Collector ought to have converted himself into a civil Court in view of the stand taken by the petitioner in the reply. The learned Commissioner has again failed to appreciate the submission made before him by the learned counsel appearing on behalf of the petitioner. The Commissioner while brushing aside this vital issue whether the orders passed by the authorities below were in order or not, has come to the conclusion that the plea regarding adverse possession was not sustainable because had the land in question been in possession of the petitioner, it would have been reflected in the record.

The Financial Commissioner (Appeals) while hearing the revision filed against the order dated 20.5.2005 has also overlooked the submission of the petitioner that the orders passed by the authorities below in view of the reply filed to the show cause notice were not in accordance with law. The Financial Commissioner (Appeals) has also mis-directed himself by concluding that the claim of adverse possession made by Shri Jai Parkash and his predecessor was not borne out. This question could only be decided at the initial stage by Assistant Collector Ist Grade by assuming the powers of civil Court. The learned Financial Commissioner (Appeals) has also committed the same illegality which has been committed by the authorities below.

The question who is the competent authority to pass orders under Section 163 of the Himachal Pradesh Land Revenue Act, 1953 if the question as to title or to the adverse possession is claimed by an encroacher, has been considered by a Division Bench of this Hon'ble High Court in **State of H.P. versus Smt. Urmila Devi, 2007 (1) SLC 129**. Their Lordships have held as under:-

“A combined reading of sub-sections (3) and (4) of Section 163 (supra) clearly suggests, without an iota of doubt that whenever a question claimed by an encroacher that he or she has been in adverse possession of the property in question for a period beyond thirty years, arises in proceedings relating to land from which ejectment is sought to be effected by a Revenue Authority exercising jurisdiction under sub-section (1) of Section 163, the said Revenue Authority (not below the rank of Assistant Collector 1st Grade) is under an obligation to proceed to determine this question as if he were a civil Court and for such determination he is required to exercise all the powers of a civil Court. A combined reading of the aforesaid two sub-sections further suggests that for the determination of the said question, the Revenue Authority shall follow the same procedure as is applicable to the trial of an original suit by a civil Court. In the ultimate analysis the said Revenue Authority is required to pass a judgment as well as a decree in the same manner as a civil Court would do with respect to a suit under the provisions of the Code of Civil Procedure. Sub-Sections (3) and (4) of Section

163, therefore, constitute a complete code in themselves because these two sub-sections lay down and prescribe a complete procedure for determination of the question by the Revenue Officer relating to the title or the adverse possession and the manner in which such question has to be determined by him.”

The upshot of the above discussion is that the orders Annexures P-1, P-2, P-4 and P-6, dated 31.7.2001 passed by Assistant Collector IInd Grade, Sub-Tehsil Dadahu, dated 18.3.2002 passed by Collector, Nahan Sub-Division, Nahan, dated 20.5.2005 passed by Commissioner, Shimla Division, Shimla-2 and 22.7.2005 passed by Financial Commissioner (Appeals) are without jurisdiction and the same are liable to be quashed and set aside.

This petition is allowed. Annexures P-1, dated 31.7.2001, P-2, dated 18.3.2002, P-4, dated 20.5.2002 and P-6, dated 20.5.2005 are quashed and set aside and the matter is remitted back to Assistant Collector Grade-I, Nahan Sub-Division, Nahan, District Sirmour for deciding the matter afresh strictly in conformity with the observations made hereinabove. The proceedings be completed within three months from the date of receipt of certified copy of the judgment.

There shall be no order as to costs.

(Rajiv Sharma)
Judge

May 9, 2007(sck).